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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,211	08/05/2003	John C. Woodard	DUMMER4.1CPCC1	6845
7590 04/20/2005			EXAMINER	
JEFFREY T. KAPLAN KAPLAN & GILMAN, LLP. 900 ROUTE 9 NORTH WOODBIDGE, NJ 07095			WHITE, DWAYNE J	
			ART UNIT	PAPER NUMBER
			3745	

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/634,211	<b>Applicant(s)</b> WOODARD ET AL.	
	<b>Examiner</b> Dwayne J White	<b>Art Unit</b> 3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 February 2005.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5,6,23 and 27-47 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☒ Claim(s) 23,27-41 and 46 is/are allowed.  
 6) ☒ Claim(s) 5,6,42 and 47 is/are rejected.  
 7) ☒ Claim(s) 43-45 is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 05 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Response to Arguments***

The amendment filed 17 February 2005 has been carefully considered but has been deemed non persuasive. Claims 5,6,23 and 27-47 are pending. Applicant's amendment to address the rejections under 35 U.S.C 112 second paragraph have been noted, as such the rejections have been withdrawn. Applicant's submission of a Terminal Disclaimer has been noted and approved. Applicant's amendment and arguments to claims 23 and 27 has been considered and is deemed persuasive. The rejections under 35 U.S.C 102(b and e) have been withdrawn.

In regards to claim 5 and 6, Applicant argues that the prior art reference Izraelev (5,924,848) does not describe the features of a shark fin or tear drop shape for the impeller. While the Examiner acknowledges that the specification does not explicitly state that the vanes are shark fin or tear drop shaped, the figures clearly show a generally triangular shape, which is the general shape of a shark's fin or a teardrop. Therefore, it is the position of the Examiner that Izraelev does in fact disclose a shark fin or teardrop shaped impeller.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Claims 5, 6, 42 and 46 are rejected under 35 U.S.C. 102(e) as being anticipated by Izraelev (5,924,848). Izraelev discloses a blood pump 10 comprising: a housing 11; a hydrodynamically suspended impeller 20 that includes a plurality of magnets 28 arranged within the impeller within a circular zone which is near the maximum radius of the impeller. The impeller includes shark fin or teardrop shaped (See Figure 3) blades 27. The blades have at least two substantially linear edges 33 (the second edge is unlabeled) along the periphery of the blade wherein the first edge has a first length and the second edge has a second length wherein the first length is less than the second length.

## CONCLUSION

### *Allowable Subject Matter*

Claims 23, 27-41 and 46 are allowed.

Claims 43, 44 and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### *Contact Information*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

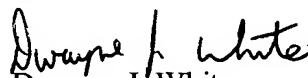
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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwayne J White whose telephone number is (571) 272-4825. The examiner can normally be reached on 7:30 am to 5 pm T-F and alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look can be reached on (571) 272-4820. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Dwayne J. White  
Patent Examiner  
Art Unit 3745

DJW

  
EDWARD K. LOOK  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700  
4/16/05